REMARKS

Introduction

  Claim 7 has been canceled, without prejudice, and therefore claims 1-6 and 8-29 are currently pending. Independent claims 1, 16, 22 and 26 have been amended herein. Reconsideration of the patentability of the claimed subject matter is requested in view of the foregoing amendments and following remarks.

§ 112 Rejection, first paragraph

  Claim 7 has been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement on the asserted grounds that there is no support in Applicants' specification for the term "predetermined fraction" in the claim.

  Claim 7 has been canceled, without prejudice, but its features have been incorporated in independent claim 1. Therefore this rejection will be addressed as if applied to claim 1.

  Claim 1, as amended, recites the feature: the gathering step further comprises measuring duration of application usage, and when an auto-shutoff occurs, includes a *predetermined fraction* of the time from a last user interaction to said auto-shutoff in said measured duration. With regard to this feature, Applicants' specification provides as follows:

> To achieve better measurements, usage duration time does not include time when the portable electronic device 100 is turned off, whether by user command or auto-shutoff. <u>Furthermore, only a fraction of the time between the last user interaction and auto-shutoff is included in the usage time measurement (**a scale factor such as 0.5 can be used**)</u>.

(Applicants' specification, page 24, lines 15-20)(emphasis added).

  It is submitted that a scale factor referred to in the above-quoted paragraph is equivalent to a predetermined fraction. Both terms are used to indicate that only a portion of the time occurring prior to a shutoff should be used in gathering statistics because of the possibility that a significant amount of time prior to the shutoff may constitute 'idle time' that is not useful for establishing usage statistics. Evidence of the equivalence between "predetermined fraction" and "scale factor" is shown by the fact that the example scale factor provided – 0.5 – is a fraction.

In view of this support within the specification, Applicants' submit that amended claim 1 is in compliance with the written description requirement. Withdrawal of the rejection of written description rejection is accordingly respectfully requested.

§ 112 Rejection, second paragraph

Claim 7 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite on the asserted grounds that it is not clear of what the scope of a "fraction" is. As noted above, claim 7 has been canceled, and independent claim 1 has been amended to incorporate its features and therefore this rejection is addressed as if applied to independent claim 1. It is submitted that the terms of amended claim 1 incorporated from claim 7 are clear when read as a whole and in light of the specification (without, of course, importing limitations).

As the MPEP states, "the essential inquiry pertaining to this [definiteness] requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure" MPEP §2173.02. In accordance with this injunction, that the specification must be consulted (first and foremost) to determine whether a term of a claim is well defined.

Turning to the term itself, the term "fraction" is a well-known and commonly used mathematical term that denotes a rational number between zero and one. Amended claim 1 recites that the fraction of the time is taken <u>from a last user interaction to said auto-shutoff</u>. Thus, the terms of the claim itself specify that the predetermined fraction refers to a fractional portion of the total duration of time between the last user interaction and the auto-shutoff. Moreover, Applicants' specification clarifies the recitations of the claim as a whole by indicating its purpose, which is to disqualify an assumed 'idle' portion of the duration, since shutoffs are often set to trigger after a certain amount of idle time (in which the user has not operated the device) has elapsed. See Applicants' Specification, page 24, lines 15-20.

Applicants therefore respectfully submit that both the specific recitations and the supporting statements and explanations within the specification sufficiently describe and render definite the terms of amended claim 1.

Withdrawal of the rejection of the indefiniteness rejection is therefore respectfully requested.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claims 1-29 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6745011 to Hendrickson et al. (*'Hendrickson'*) in view of "Measuring and Reducing Energy Consumption of Network Interfaces in Hand-Held Devices" by Stemm et al. (*'Stemm'*).

Independent claim 1 has been amended to incorporate the features of dependent claim 7, which has been canceled without prejudice, and now recites that the step of gathering further comprises *measuring duration of application usage, and when an auto-shutoff occurs, includes a predetermined fraction of the time from a last user interaction to said auto-shutoff in said measured duration.*

With respect to this feature, the Examiner acknowledges (on page 12 of the Office Action) that the *Hendrickson* reference does not teach or suggest this feature, but asserts that the *Stemm* reference cures this deficiency of the *Hendrickson* reference in that "Stemm measures the duration of usage of at least on said application program without including time when said electronic device is turned off". Applicants note however that *Stemm* teaches removing data points rather than adjusting an amount of time. For example, in paragraph 30 of *Stemm* it is stated that "[a]ny think times more than 5 minutes <u>were excluded in the simulation</u>". *Stemm*, page 5, prgh. 30 (emphasis added). The distinction is that in the claimed invention, presumed idling time is accounted for by <u>changing</u> data (using a scaling factor), whereas in *Stemm*, it is accounted for by <u>removing</u> data. The claimed feature is clearly not suggested either, as the *Stemm* reference addresses the problem of idling time in a different way, and suggests removal rather than adjustment of data as a solution. It is therefore submitted that neither *Hendrickson* nor *Stemm*, as combined, teach or suggest this feature of independent claim 1.

For at least this reason it is submitted that the *Hendrickson* and *Stemm* references do not render obvious the subject matter of claim 1, or its dependent claims 2-6, 8 and 9.

As independent claims 10, 16, 22 and 26 and its dependent claims 11-15, 17-21 and 27-29 recite features analogous to those of amended claim 1, it is submitted that these claims are also patentable over the *Hendrickson* and *Stemm* references.

Withdrawal of the rejection of claims 1-29 under 35 U.S.C. § 103(a) is accordingly respectfully requested.

Conclusion

All of the stated grounds of rejection having been addressed, Applicants respectfully request that the Examiner reconsider all presently outstanding rejections, and that they be withdrawn. The Examiner is invited to telephone the undersigned representative if an interview might expedite allowance of this application.

Respectfully submitted,

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